IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. A No. 266 of 1992

Decided on : September 10, 2007

State of H.P. **…Appellant.**

Versus

Akaljit Singh **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.**

For the Respondent : **Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.**

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondent was employed as a Clerk in the Office of Tehsildar at Rajgarh. One of the duties assigned to him was to collect the fines and penalties imposed by the Tehsildar and to deposit the same money in the treasury. During the years 1983 and 1984 he received a sum of Rs.900/-, on account of fine and penalty imposed upon seven persons and furnished receipts on plain papers to those persons but did not account for the aforesaid amount of money. Matter came to the notice of the Tehsildar only after the persons, upon whom the fines/penalties were imposed, were sent written notices to deposit the fine/penalty. They appeared and showed the receipts on plain papers issued by the respondent and claimed that they had already paid the fine/penalty. Then a report was lodged with the police. Police

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Whether reporters of the local papers may be allowed to see the judgment?

investigated the matter. Receipts on plain papers issued by the respondent were taken into possession. The same are Exts. PW-13/A, PW-13/B, PW-13/C, PW-13/D, PW-13/E, PW-13/F, PW-13/G, PW-13/H and PW-13/I. Specimen handwritings and signatures of the respondent were taken in the presence of PW-18 Shri Krishan Lal, Executive Magistrate. His admitted writings marked A-1 to A-6 were also taken into possession. The receipts and the aforesaid admitted writings and signatures, and specimen writings were sent to the handwriting expert, i.e. Government Examiner of Questioned Documents, for comparison. He opined that the receipts and the signatures thereon were in the hand of the respondent, as they tallied with his specimen and admitted writings and signatures.

3. Respondent was tried for offence punishable under Section 409 of the Indian Penal Code by the Sub Divisional Judicial Magistrate, Kandaghat, Camp at Rajgarh, and ultimately acquitted.

4. It is submitted by the learned Additional Advocate General that the evidence on record proves the case beyond reasonable doubt and the reasoning recorded by the trial Court for acquitting the respondent is perverse.

5. Trial Court has acquitted the respondent holding that the fines/penalties were supposedly paid to the respondent in the presence of the Tehsildar, but the Tehsildar did not object to the issuance of the receipts on plain papers nor did he get the money deposited in the treasury. Another reason recorded by the trial Court is that no time limit was there for depositing the money in the treasury. Third reason recorded by the trial Court is delay of one year in lodging the report with the police, after the Tehsildar came to know about the alleged embezzlement.

6. There is nothing on the record suggesting that the respondent received the embezzled amounts of money in the presence of the Tehsildar and issued the receipts on plain papers in stead of prescribed format of receipts in the presence or to the knowledge of the Tehsildar. As a matter of fact, the respondent had no authority to issue the receipts under his signatures. Normal practice followed in Courts and other Government offices is that even though the cash, on account of fine or penalty, is received by the concerned Clerk and the format of the receipt is also filled in by him, the signature on the receipt is put not by the Clerk but by the Officer/Presiding Officer, who imposes the fine/ penalty. The very fact that the receipts are issued by the respondent, under his signatures, and that too on plain paper slips is suggestive of his dishonest intention.

7. View taken by the trial Court that no time limit is prescribed for depositing of fine is also perverse. The Government Rules, particularly the Financial Rules, Treasury Rules and Government instructions, specifically require that money deposited with a government servant, in his official capacity, is required to be deposited in the government treasury on the very day of its deposit or in any case by the next following working day.

8. The third reason recorded by the learned Magistrate is also perverse. A criminal case, particularly a case of this nature, which is founded on documentary evidence and the documents are also in the hand of the accused himself, cannot be dismissed only on account of delay in lodging the FIR. Therefore, we accept the argument made on behalf of the appellant-State that the reasoning recorded by the trial Court is perverse.

9. Now coming to the evidence on record, respondent does not deny in his statement, under Section 313 of the Code of Criminal Procedure, that his specimen writings and signatures, marked S-I to S-VIII (Ex. PW-18/A to Ex. PW-18/H, were taken in the presence of PW-18 Shri Krishan Lal, Executive Magistrate, during the investigation of the case. He has simply stated that he does not know if his specimen signatures/writings were obtained in the presence of the said witness. He also does not deny that admitted writings Ex. A-1 to A-6 are his. Government Examiner of Questioned Documents, Shri R.K. Jain (PW-17), who compared the aforesaid specimen and admitted writings of the respondent with the writings and signatures on the receipts Ex. PW-13/A to Ex. PW-13/I, has testified that the specimen writings, admitted writings and the questioned writings are in the hand of the same person. His opinion is Ex. PW-17/A, which is supported by statement of reasons Ex. PW-17/B.

10. Prosecution examined all the seven persons, who allegedly deposited the amounts of fine/penalty with the respondent. Four of them, namely PW-5 Munshu Ram, PW-6 Attar Singh, PW-10 Ram Dayal and PW-14 Bhagat Ram, testified in no uncertain terms that they had deposited the money with the respondent and he issued receipts in their favour on *Katcha* papers and that they had shown those receipts to the Tehsildar when they were again called upon to deposit the same amounts of money. Their testimony is corroborated by the above referred to opinion of PW-17 Shri R.K. Jain.

11. No doubt, the other three witnesses have not supported the prosecution version but that should not make much difference, because atleast four of the persons who deposited the money with the respondent have stated that the respondent received the money from

them and issued the receipts. Admittedly, the money deposited by these four witnesses with the respondent has not been accounted for by him, which means it has been misappropriated by him.

12. As a result of the abovestated position, appeal is accepted. Judgment of the trial Court acquitting the respondent is set aside and he (the respondent) is convicted of the offence punishable under Section 409 of the Indian Penal Code. Let he be produced in the Court in person on 4th October, 2007 for being heard on the question of quantum of sentence.

(Surjit Singh), J

September 10, 2007(sd) **(Surinder Singh), J**

Cr.A No.266/1992

04.10.2007 Present: Mr. Som Dutt Vasudeva, Additional Advocate General, for the appellant.

Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, counsel for the respondent-convict.

Respondent-convict Akaljit Singh in person.

We have heard the respondent-convict on the question of quantum of sentence. We do not find any merit in his plea that he was new to the job when the misappropriation of money took place because, according to his own statement, he had been in service for 3 years prior to the incident. However, looking to the fact that the incident had taken place 24 years back and the convict has already been removed from service and the amount involved was Rs.900/- only, we take a lenient view and sentence the respondent-convict to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of two months.

Warrant for sending the respondent-convict to jail for serving out the sentence be prepared and he be sent to jail. Learned Additional Advocate General should arrange to take the respondent-convict into custody immediately. Amount of fine has been deposited in the Court.

A copy of this judgment, duly authenticated by the Court Secretary, be given to the respondent-convict, free of costs.

(Surjit Singh), J.

October 4, 2007(sd) (Surinder Singh), J.